

**KEY COMMERCIAL TERMS OF  
POWER PURCHASE AGREEMENT**

CONFIDENTIAL-SUMMARY OF PRINCIPAL COMMERCIAL TERMS

This Key Commercial Terms of Power Purchase Agreement ("**Term Sheet**") is the "Term Sheet" referred to in the Delmarva Power & Light Company Request for Proposals issued on \_\_\_\_\_, 2006 (the "**RFP**").

**Parties** [SERVICE PROVIDER], a \_\_\_\_\_ ("**Seller**"), and Delmarva Power & Light Company, a Delaware corporation ("**Delmarva**" or "**Buyer**"), referred to individually as "Party" or collectively as "Parties".

**Transaction** Seller will provide and make available to Buyer and Buyer will purchase and pay for all Products (as defined below) provided pursuant to the terms of the definitive Power Purchase Agreement entered into by the Parties (the "**Definitive Agreement**").

**Project** Any generation resource comprised of New Units (as defined below) located in the State of Delaware with a ~~minimum Capacity (as defined below) to be made available under the Definitive Agreement of 50 MW (non-renewable resource) or 25 MW (renewable resource) and a maximum~~ Contract Capacity of 200400 MW ("Project"). The location (street address and county), the technology and fuel type of the Project are to be specified by Seller in its response to the RFP. A Project may consist of one or more individual generating units (e.g., wind turbines, simple-cycle combustion turbines, combined-cycle facilities) that may be part of a larger generating facility (that may be larger than 200400 MW and that need not consist only of New Units) that are capable of being dispatched without regard for the operation or non-operation of any other generating unit (each, a "**Unit**"), but Projects must be comprised entirely of New Units.

To qualify as a "**New Unit**", a Unit must be a generation resource which is ~~a major stationary source as defined in 40 C.F.R. Section 52.21(b)(1)(i) or 40 C.F.R. Section 52.24(f)(4)(i) which enters into Commercial Operation no~~ earlier than the date of execution of the Definitive Agreement. A "New Unit" also may be the incremental increase in Capacity (but only the

incremental increase in Capacity) to an existing generation resource-  
~~resulting from any modification to such resource that constitutes a major~~  
~~modification as defined in 40 C.F.R. Section 52.21(b)(2)(i) or 40 C.F.R.~~  
~~Section 52.24(f)(5)(i) for which the Delaware Department of Natural~~  
~~Resources and Environmental Control requires a permit under the Delaware~~  
~~Regulations Governing the Control of Air Pollution which is completed and~~  
 resumes Commercial Operation no earlier than the Execution Date (as  
 defined below).

**“Commercial Operation”** is defined to mean that all commissioning  
 activities have been completed, all performance testing has been  
 satisfactorily completed ~~(including that the Unit has demonstrated a net~~  
~~Capacity of not less than 95% of the maximum Contract Capacity specified~~  
~~in Seller’s Offer)~~, that the Unit, that the Project is capable of regular  
 commercial operation as reasonably determined by Buyer, and that the  
 Unit Project has been accepted as a Capacity Resource by PJM. In addition,  
the Project must demonstrate a net Capacity of not less than 95% of the  
maximum Contract Capacity specified in Seller’s offer (for less  
commercially established technologies, such as IGCC, Seller shall be  
allowed in its Offer to propose, subject to Buyer’s approval, a percentage  
lower than 95% if consistent with the definitions of “Substantial  
Completion” and “Facility Acceptance” in their anticipated construction  
and/or financing agreements).

Seller understands and agrees that Buyer’s percentage entitlement (which,  
depending on Seller’s proposal, may be less than 100%) to all Product from  
 all Units comprising a Project must be made available exclusively to Buyer  
 pursuant to the Definitive Agreement except as otherwise expressly  
 provided by the Definitive Agreement, ~~but that the obligation to provide the~~  
~~Product is not subject to the availability of any Unit once the Services Term~~  
~~has commenced.~~

**Contract Term  
 and Services  
 Term**

The **“Contract Term”** will commence upon execution and delivery by both  
 Parties of the Definitive Agreement and continue until final settlement (after  
 the end of the Services Term, as defined below). The date the Definitive  
 Agreement is executed and delivered by both Parties and Seller posts the  
 initial installment of the Development Period Security (as defined below) is  
 the **“Execution Date.”** The Definitive Agreement will include conditions  
 relating to Buyer’s receipt of Regulatory Approval (as defined below) ~~and~~  
~~the posting of the second installment of Development Period Security which~~  
 must be satisfied prior to the time the Parties’ remaining obligations become  
 effective. Only upon satisfaction of such conditions will the **“Effective**  
**Date”** be deemed to have occurred. ~~The Seller’s Offer Deposit (required~~  
~~pursuant to the RFP) must remain in place until the initial installment of the~~  
~~Development Period Security is received by Buyer on the Execution Date~~

~~and will be returned to Seller upon receipt of such initial installment.~~

The “**Services Term**” will be the period during which Seller is obligated to provide Products to Buyer. The Definitive Agreement will specify the length of the Services Term. The Services Term shall commence on the Initial Delivery Date (as defined below) and continue for a minimum of ten (10) years and a maximum of twenty-five (25) years. The Initial Delivery Date may be no earlier than the Effective Date, and the Guaranteed Initial Delivery Date may be no later than June 1, 2013.

**Product**

“**Product**” shall mean, collectively, Energy, Capacity, Ancillary Services and Environmental Attributes, all as defined herein. Seller may not enter into any agreement or arrangement under which Product attributable to the Project may be claimed by any person other than Buyer for purposes of satisfying such person’s obligations to PJM Interconnection, LLC (“**PJM**”) or any other independent system operator having jurisdiction over such person or the Units. Following the occurrence of the Initial Delivery Date, Seller’s obligation to deliver Product under a Unit contingent Offer will ~~not~~ be dependent upon the availability of the Project; thus, subject to Contract Price adjustments and the possibility of default for specified levels of unavailability over time. For Sellers which opt to offer Firm power, if the Project is not available at any time during the Services Term, Sellers such Sellers will be obligated to provide Product from other resources or pay cover damages for replacement Products.

“**Capacity**”: Seller’s Offer should set forth a monthly schedule showing the maximum MWs of ~~Unforced Capacity or “UCAP”~~ Net Capability rated for the applicable summer or winter rating period (as defined in PJM’s ~~Reliability Assurance Agreement or any successor agreement by PJM~~) that the Seller is offering to make available to Buyer in each month of the Services Term (“**Contract Capacity**”). The highest Contract Capacity specified by Seller for any month is referred to herein as the “**Guaranteed Capacity**.”

The amount of Capacity that Buyer will pay for each month will be the lesser of the Contract Capacity and the UCAP summer Net Capability rating of the Project as determined by PJM from time to time  (“Monthly Contract Capacity”), with payments for Monthly Contract Capacity adjusted by the Availability Adjustment mechanism set forth in Attachment 3. For wind energy projects and other intermittent renewable energy projects (solar and hydro), Buyer will pay Seller for the amount of Unforced Capacity from Buyer’s entitlement to Contract Capacity from the Project as determined by PJM from time to time.

**“Energy”:** All electric energy produced by the Unit(s) up to the Monthly Contract Capacity defined above. Energy shall be offered consistent with the type of Project proposed by Seller (i.e., baseload, intermediate, load-following or peaking).

**“Ancillary Services”:** All products deemed to be “Ancillary Services” by PJM and/or the Federal Energy Regulatory Commission (“FERC”) as of the ~~Effective Date~~execution date of the PPA or a future date during the Contract Term, including but not limited to reactive power, regulation (including load following), spinning reserves, non-spinning reserves, and replacement reserves associated with the Unit(s), ~~together with all other capabilities of each Unit such as black start capability and replacement reserves that are not defined as Ancillary Services, and rights such as Environmental Attributes.~~ Seller should identify all Ancillary Services that the Project is capable of providing. With respect to any Ancillary Service that is created after the execution of the PPA, Seller shall be required to provide the Ancillary Service (a) to the extent it can be provided by a project without any material increase in operating or capital costs or material increase in revenues or (b) it can be provided by a project and there are material costs and/or reduced revenues associated with providing the service and the Buyer agrees to hold the Seller harmless in order to secure the delivery of the future product.

**“Environmental Attributes”** means (a) ~~all credits, benefits, reductions, offsets and other beneficial allowances, howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics attributable or allocable to the Project and its operation during the Contract Term and in which Seller has property rights~~Renewable Energy Credits and the Generation Attributes of the Project that the Renewable Energy Credits represent, as both terms are defined by the PSC’s Rules and Procedures to Implement the Renewable Energy Portfolio Standard, and (b) and (b) any property rights which Seller has or will have property rights upon such attributes’ coming into existence, and include without limitation any of the same arising out of legislation or regulation concerned with arising out of avoided emissions of pollutants to the air, soil or water due to the operation of the Project including but not limited to avoided emissions of (A) oxides of nitrogen, sulfur, or carbon, (B) particulate matter, soot, or mercury, or (C) implementing the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, and (b) all rights to claim or report Environmental Attributes and/or (C) carbon dioxide, methane and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere.

**Resource  
Adequacy**

The Public Service Commission of the State of Delaware (the "PSC") or PJM or a successor control area operator may, during the Contract Term, may put into place a Resource Adequacy ("RA") requirement whereby eligibility to credit Capacity toward the RA requirement may be determined by identifying specific Unit(s) or a combination of Unit(s). Seller agrees that the Unit(s) or combination of Units comprising the Project will meet all requirements necessary to qualify as a resource capable of contributing to Buyer's RA requirement and will consent in the Definitive Agreement to take such measures as necessary to qualify as a resource that counts toward Buyer's RA Requirement; provided, however, in the event the Seller is required to incur any material increase in operating or capital costs, or any material decrease in revenues, in order to meet such RA requirement, Buyer shall have the option to waive or to enforce compliance with the RA requirement, and shall, in the latter case, hold the Seller harmless against the financial effects of compliance with the RA requirement. In the event that the parties disagree on the amount needed to keep the Seller in the same financial position, the matter would be resolved in accordance with the contract dispute resolution mechanism. In addition, Seller agrees to comply with all associated bidding/dispatch requirements imposed through either PJM market design and tariffs, the PSC, or FERC. Such bidding requirements may be imposed in the day ahead, hour ahead or real time timeframe. Buyer will also have exclusive rights to all RA related products such as capacity tags, capacity credits, or installed capacity ("ICAP") products; pertaining to Buyer's entitlement in the Products from the Project. Subject to the foregoing, Seller shall comply with any PSC, PJM or FERC requirements for meeting RA.

**Commencement  
of Services**

The "Initial Delivery Date" is the date on which the Seller's obligation to make Capacity available and to deliver Energy and Ancillary Services (as scheduled) commences, and Compensation payable by Buyer to Seller begins to accrue. The Initial Delivery Date shall not occur until the Seller has satisfied all conditions precedent to the Initial Delivery Date, which in the case of new generation, shall include (at a minimum):

- completion of the electric transmission interconnections necessary for delivery of electricity to the Buyer at the Delivery Point;
- completion of all equipment necessary for fuel delivery;
- demonstration that Seller holds all required environmental permits- ~~and, to the extent required to operate at the maximum Contract Capacity, all emission allowances, credits and offsets;~~
- demonstration that Seller has interconnection and transmission services agreements in place that are reasonably satisfactory to Buyer;



- demonstration that Seller has fuel supply and transportation agreements in place that are reasonably satisfactory to Buyer;
- each Unit has achieved Commercial Operation; and
- Seller has posted any applicable Collateral Requirement (as set forth in the "Credit Requirements" section below) required to be provided as of the Initial Delivery Date.

**Development  
Period Security**

On the Execution Date Seller shall be required to post collateral in the form of an irrevocable standby letter of credit acceptable in form and content to Buyer from an issuer satisfying the requirements set forth in the RFP (a "**Letter of Credit**") to secure Seller's obligations in the period between the Execution Date and the Initial Delivery Date ("**Development Period Security**"). The Development Period Security to be provided on the Execution Date shall be in an amount equal to the product of (x) \$50,50 (\$20 for intermittent renewable energy projects), multiplied by (y) the Guaranteed Capacity (expressed in kilowatts). By not later than fifteen (15) days after the Effective Date, the amount of the Development Period Security shall be increased to equal the sum of (i) the product of (x) \$100,100 (\$40 for intermittent renewable energy projects), multiplied by (y) the Guaranteed Capacity (expressed in kilowatts), ~~plus (ii) the maximum potential amount of Delay Damages payable under the Definitive Agreement as determined in "Delay Damages" below.~~ Failure of Seller to provide the increased amount of Development Period Security shall allow Buyer to terminate the Definitive Agreement and retain the initial installment of Development Period Security as liquidated damages.

**Early  
Termination  
Rights for  
Permitting  
Failures**

Buyer will allow Seller to terminate its Definitive Agreement and Buyer will return the Delivery Date Security to Seller less \$50 per kW (\$20 per kW for intermittent renewable energy projects) of Guaranteed Capacity as liquidated damages if Seller, after making all commercially reasonable efforts to do so, is unable to secure the necessary permits and other governmental approvals required for construction of the Project within ~~eighteen (18) months of the permit time period, which shall commence on~~ the date Buyer notifies Seller that it has received ~~final and non-appealable~~ Regulatory Approval (as defined below) for its entry into and performance under the Definitive Agreement] ~~(and shall end after the passage of the number of months specified by Seller in Seller's Offer as the permitting duration (such duration, the "Permit Duration") (such ending date, as may be extended, the "Permitting Completion Deadline").~~ The Permit Duration proposed by Seller shall be consistent with industry standards, as reasonably determined by Buyer, and with the Guaranteed IDD Date. If Seller notifies Buyer that Seller has been unable to timely secure the necessary permits and governmental approvals due to events of Force Majeure, the Permitting Completion Deadline will be extended if due to an

event of Force Majeure, without penalty to the Seller, for up to an additional six (6) months. Alternatively, if Seller notifies Buyer that Seller has been unable to timely secure the necessary permits and governmental approvals, for reasons other than Force Majeure, or if the limit on permit Force Majeure is reached, Buyer will permit Seller to extend the Permitting Completion Deadline by six (6) months if Seller agrees, going forward, to pay the full amount of the Development Period Security to Buyer as liquidated damages should it be unable to obtain the necessary permits and governmental approvals by the extended Permitting Completion Deadline.

**Construction  
Schedule**

At least three (3) months prior to issuance of the notice to proceed by Seller to its construction contractor, Seller shall provide Buyer a construction schedule. Seller shall provide Buyer monthly progress reports, including projected time to completion, and Buyer shall have the right, during business hours and upon reasonable notice, to inspect the construction site and monitor construction of the Project.

**Guaranteed  
Initial Delivery  
Date and Delay  
Damages**

Seller guarantees that the Initial Delivery Date will occur by not later than \_\_\_\_\_ (the "**Guaranteed Initial Delivery Date**").

Subject to Force Majeure delays not to exceed twelve (12) months in the aggregate, for each day (or part thereof) that the Initial Delivery Date is delayed beyond the Guaranteed Initial Delivery Date, the Seller shall pay to Buyer liquidated damages equal to \$\_\_\_\_\_ [determined using \$0.2333 per kW of Guaranteed Capacity] ("**Delay Damages**"). Delay Damages shall be payable monthly in arrears. The maximum amount of Delay Damages payable by Seller shall be \$\_\_\_\_\_ [determined using daily Delay Damages amount multiplied by 365] ("**Maximum Delay Damages**"). The Maximum Delay Damages shall apply to limit aggregate delay damages whether incurred due to failure to meet interim construction deadlines or due to failure to achieve the Initial Delivery Date by the Guaranteed Initial Delivery Date, but is not a limit on damages due to Buyer's right to terminate due to Seller's failure achieve the Initial Delivery Date by the Guaranteed Initial Delivery Date.

In addition to receiving Delay Damages, subject to Force Majeure delays not to exceed twelve (12) months in the aggregate, if the Initial Delivery Date is delayed beyond the date that is no more than twelve (12) months after the Guaranteed Initial Delivery Date (the "**Date Certain**"), Buyer may elect to terminate the Definitive Agreement without liability or further obligation of any kind on the part of Buyer, and the Seller shall pay a termination fee equal to \$\_\_\_\_\_ [determined using \$100 per kW of Guaranteed Capacity] as liquidated damages to Buyer (the "**Termination**").

Fee”).

**Critical  
Milestones**

The Definitive Agreement will specify dates by which certain critical milestones for the development and construction of the Project must be achieved, which critical milestones shall include closing of debt or other third-party financing (unless Seller demonstrates as of the Effective Date that it has equity financing sufficient to cause the project to achieve the Initial Delivery Date), issuance of a full notice to proceed to the construction contractor, delivery of generators to the Project site, and energization of the Project). Seller’s failure to achieve a critical milestone within ~~sixty (60) days~~ twelve months of the specified date for reasons not due to Force Majeure shall constitute an event of default under the Definitive Agreement allowing Buyer to terminate and to retain the full amount of Development Period Security as liquidated damages.

**Scheduling**

Seller shall be obligated to perform all scheduling of the Unit(s) in compliance with PJM protocols.

**Operational  
Constraints**

The operational constraints of the Unit(s) shall be those set forth in Seller’s response to the RFP. ~~Although Seller’s obligation to provide Products is not Project specific, Seller’s obligation to provide Product as of any given time would be based on the Unit’s(s’) operational constraints. The and~~ availability, unless Seller has exercised the option to provide Firm power in its Offer. For Firm power, the unavailability of a Unit dispatched within such operational constraints will not excuse Seller’s obligation to deliver Products as otherwise required under the Definitive Agreement.

**Operating  
Procedures**

Prior to the Initial Delivery Date, the Parties shall mutually develop written procedures governing operations, not in contravention or amendment of any right or obligation set forth herein or in the Definitive Agreement, including, but not be limited to, (1) procedures for scheduling, (2) methods of day-to-day communications, (3) key personnel lists, (4) record keeping and (5) such other procedures and protocols as the Parties deem appropriate for implementation of this Agreement (the “**Operating Procedures**”). Failure to agree on the Operating Procedures shall be resolved in accordance with the dispute resolution procedures, but shall not relieve either of the Parties of its other obligations under this Agreement.

**Interconnection  
Point and  
Delivery Point**

The “**Interconnection Point**” of the Project will be the PJM bus in the State of Delaware to which the generator is electrically connected, or the closest location thereto in the State of Delaware monitored for Locational



Marginal Price by PJM. The “**Delivery Point**” of all Energy delivered under the Definitive Agreement shall be the “~~Delmarva-~~Zone.”Interconnection Point.

**Electric  
Interconnection  
and  
Transmission  
Service**

Seller shall be responsible for all costs related to upgrades to transmission facilities and construction of interconnection facilities required to interconnect the Unit(s) to the Interconnection Point and enable Energy to be delivered to the grid at the Delivery Point, consistent with all standards and provisions set forth by the FERC, PJM or any other applicable governing agency and the interconnecting transmission owner.

Seller will be responsible for funding any upgrade(s) to the transmission network as required by PJM. Regardless of whether Buyer is the interconnecting transmission owner, Delmarva in its capacity as Buyer shall not be responsible for Seller's interconnection arrangements or costs.

Seller shall be responsible for the costs of delivering its power to the Delivery Point consistent with all standards and provisions set forth by the FERC, PJM or any other applicable governing agency or tariff.

**Fuel  
Interconnection**

For gas-fired Projects, Seller shall be responsible for all costs related to upgrades to transmission facilities and construction of interconnection facilities required to interconnect the Unit(s) to the natural gas system and enable delivery of fuel to the Unit(s), consistent with all standards and provisions set forth by the FERC or any other applicable governing agency. For non-gas-fired Projects, Seller shall be responsible for all fuel delivery and storage facilities.

**Fuel Supply and  
Transportation**

Seller shall be responsible for all arrangements for and costs of fuel supply and delivery, including all ancillary services such as balancing or storage. (The preceding is without prejudice to such pricing proposals as Seller wishes to offer, which may tie the price of energy to the cost of fuel).

**Maintenance  
Obligations**

Seller will be responsible for all operation and maintenance of the Unit(s) and will bear all costs related thereto.

**Compensation:**

A. “**Capacity Payment Rate**”—specify the annual values (or formulas to determine values) in the response to the RFP as \$ per kW-year (price to include Ancillary Services and Environmental Attribute products other than Renewable Energy Credits) to be paid in equal monthly increments.

B. “**Energy Rate**”—specify the rate or rates (or formulas to determine rates) in the response to the RFP as \$ per MWh.

C. “**Renewable Energy Credits**” (or “**RECs**”)—if the Unit qualifies as an Eligible Energy Resource as defined in the DPSC’s Rules and Procedures to Implement the Renewable Energy Portfolio Standard, specify the rate or rates in the response to the RFP as \$ per MWh. Buyer’s obligation to purchase RECs shall be subject to a maximum volume limitation, which is [or shall be] set forth in the RFP.

The monthly “**Capacity Payment**” is (x) one-twelfth (1/12th) of the Capacity Payment Rate, multiplied by (y) the Monthly Contract Capacity for the specific month (for intermittent renewable energy projects—Unforced Capacity as determined by PJM will be used), multiplied by (z) the Period-Specific Availability Adjustment Factor set forth in Attachment 3 hereto (not used for intermittent renewable energy projects). The Capacity Payment will be paid monthly, in arrears, for each month of the Services Term.

“**Energy Payment**”: For each month of the Services Term, the Energy Payment will equal the Energy Rate multiplied by the amount of Energy scheduled and received by Buyer in the applicable month.

#### **Billing and Payment**

Each month during the Services Term, Seller shall invoice Buyer, in arrears, for all Compensation amounts. Each month during the Services Term, Buyer shall invoice Seller, in arrears, for the Deviation Charges any amount owed, if any under the Definitive Agreement. If each Party is required to pay the other an amount in the same month pursuant to the Definitive Agreement, then the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Payment of all undisputed amounts owed shall be due by the later of ten days after delivery of the owed Party’s invoice or the twentieth day of the month (or, in each case, if the due date is not a business day, on the next following business day). The Parties shall resolve disputed amounts pursuant to a dispute resolution process to be included in the Definitive Agreement. In the event of termination, Buyer, as calculation agent, shall determine the amount of the Termination Payment, and either (a) if Seller is the owing Party, provide Seller an invoice within ten (10) business days of the termination date, which shall be due within ten (10) business days after receipt; or (b) if Buyer is the owing Party, pay Seller the Termination Payment within twenty (20) business days of the termination date.

**Events of Default** ~~Either Party will be in~~ An Event of Default with respect to a Party shall exist

under the Definitive Agreement upon the occurrence of, ~~including but not limited to~~ any of the following:

Applicable only to Seller:

- Failure to deliver any Product produced by the Unit(s) to Buyer as and when required under the Definitive Agreement and delivery of such Product without right to any third party where such failure continues for three (3) days after notice thereof is received.
- Any material asset of Seller is taken upon execution or by other process of law directed against Seller or if taken upon or subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within twenty-one (21) days after its levy.
- Upon the occurrence of any material misrepresentation or omission in any metering or any report or notice of availability required to be made or delivered by Seller to Buyer by the provisions of the Definitive Agreement, which misrepresentation or omission is caused by Seller's willful misconduct, gross negligence or bad faith.
- Seller fails to post, supplement or renew when due the Development Period Security and such failure continues for five (5) days after notice thereof is received, except for the failure to post the remainder of the Development Security fifteen (15) days after the Effective Date, for which failure, no notice is required.
- Seller fails to comply with Resource Adequacy requirement of as and to the extent required by the Definitive Agreement, which failure continues for sixty (60) days after notice thereof is received.
- During the Services Term, the UCAP ~~of the Project is below 90% of the then applicable Monthly Contract Capacity for a period of~~ Equivalent Availability Factor of the project is below 60 percent for a period of twelve (12) consecutive months for a reason other than Force Majeure and such failure continues for the next following six (6) consecutive months, and such reduction in UCAP is not due to a Force Majeure event;
- During the Services Term, the Equivalent Availability Factor of the project is below 60% for a period of twenty-four (24) consecutive months due to an event of Force Majeure results in the Project's UCAP being less than 90% of the then applicable Monthly Contract Capacity for a period of twelve (12) consecutive months.
- Seller fails to comply with Credit Requirement provisions of the Definitive Agreement and such failure continues for ten (10) days after notice thereof is received.

Applicable to both Parties:

- A Party fails to pay an amount when due and such failure continues for ten (10) business days after notice thereof is received.
- A Party fails to perform any of its material obligations under the Definitive Agreement and such default continues for thirty (30) Days after notice thereof is received, specifying the Event of Default; provided, however, that such period shall be extended for an additional reasonable period if cure cannot be effected in thirty (30) days and if corrective action is instituted by the defaulting Party within the thirty (30)-day period and so long as such action is diligently pursued until such default is corrected, but in any event within ninety (90) days.
- A Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver, or custodian of its assets (including, in the case of Seller for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws.
- Absent the consent or acquiescence of a Party, appointment of a trustee, receiver, or custodian of its assets (including in the case of a Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within sixty (60) days.
- ~~Seller fails to comply with Credit Requirement provisions of the Definitive Agreement.~~
- Any governmental approval necessary for a Party to be able to perform all of the transactions contemplated by the Definitive Agreement expires, or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation, or suspension thereof, by reason of the action or inaction of such Party and such expiration, revocation or suspension creates a material adverse impact on the other Party.
- Upon the occurrence of any material breach of any representation, covenant, or warranty made by a Party made in the Definitive Agreement, thirty (30) days after the written notice from the other Party that any material representation, covenant or warranty made in the Definitive Agreement is false, misleading or erroneous in any material respect without the breach having been cured.

**Remedies:**

Upon the occurrence of an Event of Default ~~due to Seller's failure to deliver any Product as and when due under the Definitive Agreement, Buyer's remedy shall be payment by Seller of all of Buyer's costs of obtaining such Product from parties other than Seller (i.e., cost of cover). In the case of all other Events of Default, or if Seller fails to deliver any Product as and when due under the Definitive Agreement more than five (5) times in any~~